



INTERIOR BOARD OF INDIAN APPEALS

Quinault Allottees Association v. Portland Area Director, Bureau of Indian Affairs

14 IBIA 149 (07/02/1986)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

QUINULT ALLOTTEES ASSOCIATION

v.

AREA DIRECTOR, PORTLAND AREA OFFICE, BUREAU OF INDIAN AFFAIRS

IBIA 86-35-A

Decided July 2, 1986

Appeal from a decision concerning the extension of Crane Creek Logging Unit Contract No. I-101-IND-1902.

Remanded.

1. Board of Indian Appeals: Jurisdiction--Bureau of Indian Affairs:
Administrative Appeals: Discretionary Decisions

When the official exercising the administrative review functions of the Commissioner of Indian Affairs fails to issue a decision within 30 days from the date an appeal was ripe for decision, the Board of Indian Appeals acquires jurisdiction under the terms of 25 CFR 2.19(b) without regard to whether the decision under review is based upon an exercise of discretion or an interpretation of law.

2. Indians: Contracts: Generally

As is the initial decision whether or not to approve a contract affecting an Indian tribe, the decision whether or not the contract should be extended, and, if extended, the terms of the extension, are matters committed to the discretion of the Secretary of the Interior.

3. Bureau of Indian Affairs: Administrative Appeals: Discretionary Decisions

Under 43 CFR 4.337(b), the Board of Indian Appeals must refer to the Bureau of Indian Affairs official exercising the administrative review authority of the Commissioner of Indian Affairs those issues arising in an appeal before it that are committed to the Commissioner's discretion.

APPEARANCES: Ronald J. Yann, Aberdeen, Washington, for appellant; J. McLane Layton, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee; Gregory M. O'Leary, Esq., Seattle, Washington, for ITT-Rayonier. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

On April 16, 1986, the Board of Indian Appeals (Board) received a notice of appeal from the Quinault Allottees Association (appellant) seeking review of the terms of an agreement between the Bureau of Indian Affairs (BIA) and ITT-Rayonier extending Crane Creek Logging Unit Contract No. I-101-IND-1902, on the Quinault Reservation. The agreement was signed in November 1985. Appellant did not object to BIA's authority to extend the agreement, but argued that paragraph 6.d of the extension agreement, providing for the payment of 50 percent of the rise in the IFA Combined Market Species Log Grade Prices, was overly advantageous to ITT-Rayonier and disadvantageous to the Indian landowners.

Appellant sought review by the Board under the provisions of 25 CFR 2.19, 1/ on the grounds that its appeal to the BIA official exercising the administrative review functions of the Commissioner of Indian Affairs had been pending for more than 30 days without decision. By order dated April 18, 1986, the Board made a preliminary determination that it had jurisdiction over the matter and requested the administrative record. The Board's order provided that its preliminary jurisdictional determination was subject to further review.

On May 27, 1986, the Board received a motion from appellee seeking to have the case dismissed for lack of jurisdiction on the grounds that the decision under review was discretionary. Appellee further sought to have the case remanded to BIA for the issuance of a final decision. By order dated May 27, 1986, other interested parties to this appeal were given an opportunity to respond to appellee's motion.

A motion supporting appellee's position was received from ITT-Rayonier on June 17, 1986. Appellant opposed the motion in a response received on June 26, 1986.

[1] The Board has carefully reviewed the parties' filings. We agree with appellant to the extent it states that 25 CFR 2.19 makes no distinction

1/ Section 2.19 states in pertinent part:

"(a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [or BIA official exercising the administrative review functions of the Commissioner] shall:

"(1) Render a written decision on the appeal, or

"(2) Refer the appeal to the Board of Indian Appeals for decision.

"(b) If no action is taken by the Commissioner within the 30-day time limit, the Board of Indian Appeals shall review and render the final decision."

between cases based upon an exercise of discretion and those based upon an interpretation of law. The section clearly contemplates a decision by the Commissioner or other official exercising the administrative review responsibilities of the Commissioner within 30 days from the date the case is ripe for decision. In the absence of such a decision, the Board acquires jurisdiction over the appeal. Accordingly, the Board reaffirms its finding that it has jurisdiction over this appeal under 25 CFR 2.19(b).

[2, 3] However, the filings also show that the decision under review concerns whether or not a contract should be extended, and, if extended, on what terms. Such a decision, as is the initial decision whether or not to approve a contract, is a question committed to Secretarial discretion. Under 43 CFR 4.337(b), "[w]here the Board finds that one or more issues involved in an appeal or a matter referred to it require the exercise of discretionary authority of the Commissioner, the Board shall refer those issues to the Commissioner for resolution." Under the circumstances of the present case, the Board finds that this entire case must be remanded to BIA for the exercise of the discretionary authority of the Secretary.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this case is dismissed and remanded to the Bureau of Indian Affairs. The Board expects that a decision in this matter will be issued expeditiously.

//original signed

Jerry Muskrat
Administrative Judge

I concur:

//original signed

Anita Vogt
Administrative Judge